



June 30, 2000

Ms. Michelle Simpkins  
Winstead Sechrest & Minick  
100 Congress Avenue, Suite 800  
Austin, Texas 78701

OR2000-2496

Dear Ms. Simpkins:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 136766.

The Brushy Creek Municipal Utility District (the "district"), which you represent, received a request for the proposed contract relating to wastewater capital recovery fees (the "contract") between the district and the City of Austin and any related correspondence and for documents relating to a mediation with the City of Round Rock. You inform us that the district has responded to the request for information regarding the mediation. You state that the only responsive information relating to the proposed contract with the City of Austin (the "city") is various drafts of the proposed contract. You claim that the drafts are excepted from disclosure under section 552.111 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

Section 552.111 excepts from public disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." Gov't Code § 552.111. An information exchange between two governmental bodies does not qualify as an interagency transfer of information for the purposes of section 552.111 unless the governmental bodies that are exchanging information share a privity of interest or common deliberative process with regard to the policy matter at issue. See Open Records Decision No. 561 at 9 (1990) (construing statutory predecessor). You inform us that drafts of the proposed contract with the city, entitled "Agreement Regarding Termination of Wholesale Wastewater Agreement and Disposition of Capital Recovery Fees," have been transferred between the district and the city during the course of their negotiations. You also

inform us that the district remains in negotiations with the city concerning the termination of wastewater capital recovery fees and that the district anticipates further revisions of the proposed contract and further negotiations with the city. Neither your request for this ruling nor the submitted drafts of the proposed contract demonstrate a privity of interest or a common deliberative process between the district and the city regarding the matters at issue. Therefore, the submitted information is not excepted from disclosure pursuant to section 552.111 of the Government Code and must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

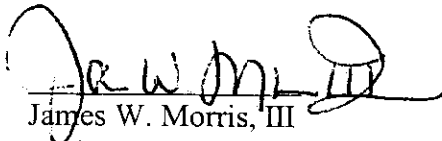
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in dark ink, appearing to read 'J W Morris III', written over a horizontal line.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/CHS/pr

Ref: ID# 136766

Encl. Submitted documents

cc: Mr. John C. McLemore  
8400 Cornerwood Drive  
Austin, Texas 78717  
(w/o enclosures)